
REDISTRICTING BRIEFING FOR OKLAHOMA

LAW AND PRINCIPLES

OCTOBER 12, 2020

BEN WILLIAMS



WHAT DOES NCSL DO?

- Serves 7,383 legislators and 25,000 legislative staff
- Provides non-partisan research & analysis
- Links legislators with each other and experts
- Speaks on behalf of legislatures in D.C.



OUR OUTLINE FOR TODAY

Part I: Law

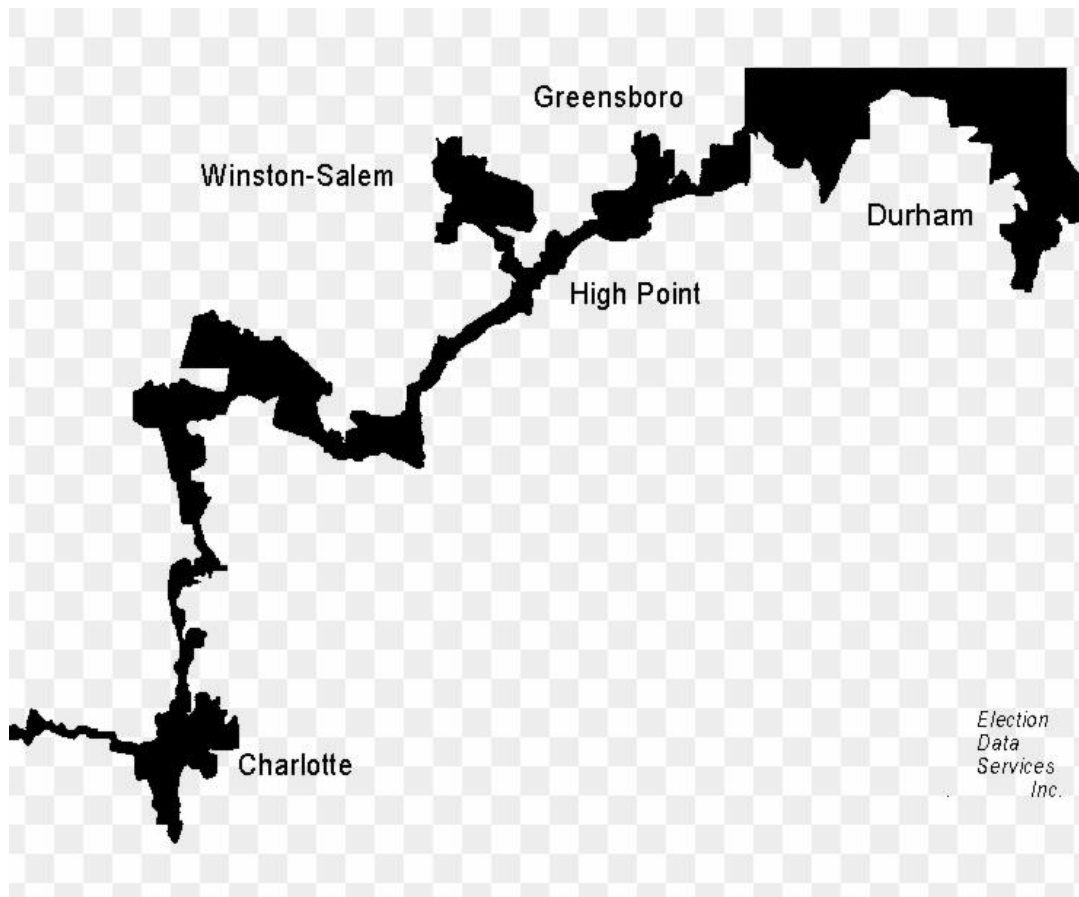
- **Federal**
 - Racial Gerrymandering
 - Partisan Gerrymandering
 - One Person, One Vote
 - VRA Section 5
 - VRA Section 2
- **State**
 - Free and Fair/Equal Elections

Part II: Principles

- **Federal**
 - Single-Member Districts
- **State**
 - Principles in Oklahoma Constitution
 - Compactness
 - Contiguity
 - Preserving Political Subdivisions
 - Communities of Interest
 - Preserving Cores of Prior Districts

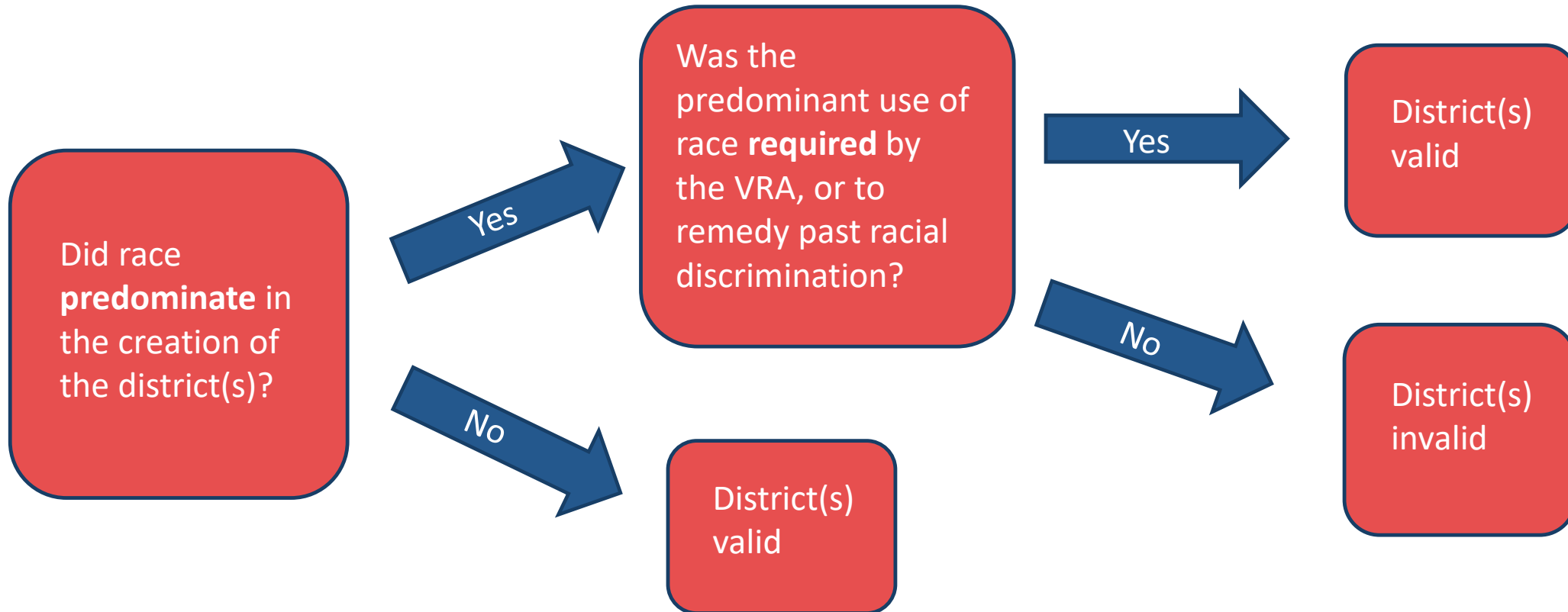


FEDERAL LAW: RACIAL GERRYMANDERING



- Equal Protection Clause claim
- Origin: *Shaw v. Reno* (1993)
- Claim has evolved over time
 - 1990s: white plaintiffs suing for lack of compliance with traditional principles
 - 2010s: black plaintiffs suing on vote dilution claims outside scope of Voting Rights Act

FEDERAL LAW: RACIAL GERRYMANDERING

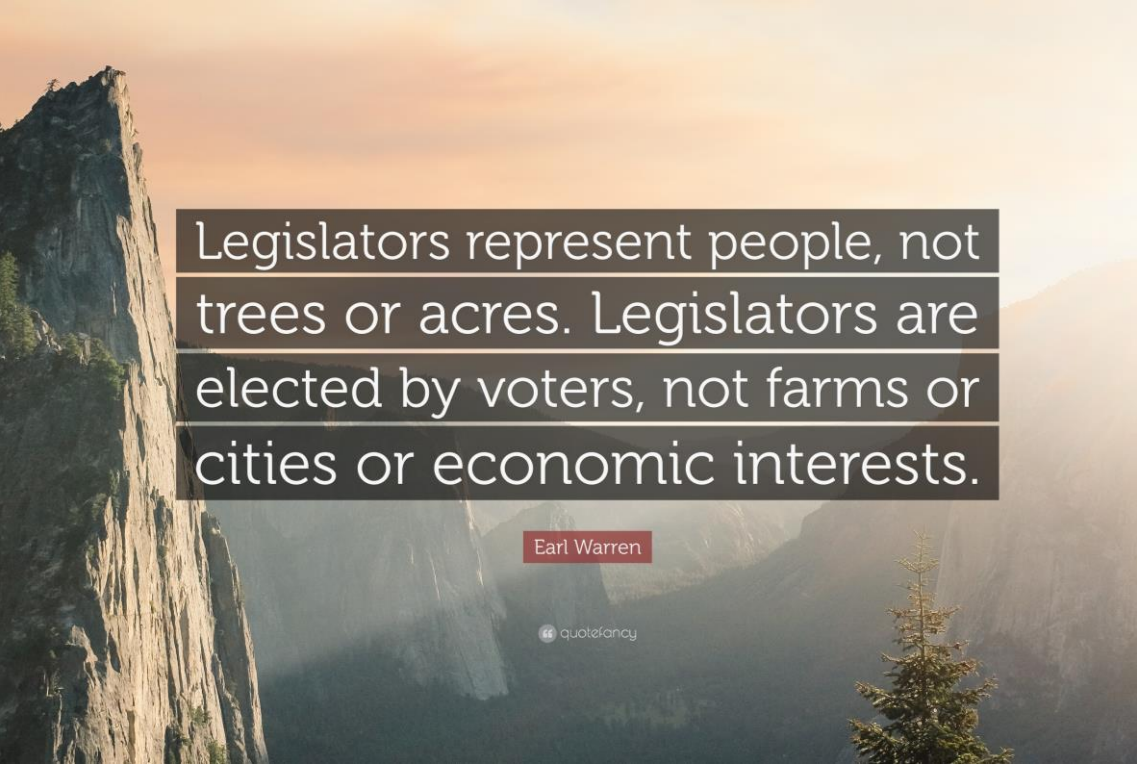


FEDERAL LAW: PARTISAN GERRYMANDERING



- Major focus at SCOTUS this decade
- Claims based on 1st and 14th Amendments
- No longer judicable in federal courts
- But theories from these cases have successfully been used in state courts (more to come...)

FEDERAL LAW: ONE PERSON, ONE VOTE



Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests.

Earl Warren

quoteancy

- **Principle:** Equal Protection requires that votes for legislators and congressmembers hold equal weight
 - Congressional Districts: *Wesberry v. Sanders* (1964)
 - State Legislative Districts: *Reynolds v. Sims* (1964)
- **Application:** Varies depending on district type
 - Congressional Districts: Exact numerical equality
 - State Legislative Districts: +/- 5% deviation if justified by compliance with traditional criteria



NATIONAL CONFERENCE OF STATE LEGISLATURES

FEDERAL LAW: VRA SECTION 5

SUPREME COURT OF THE UNITED STATES

Syllabus

SHELBY COUNTY, ALABAMA *v.* HOLDER, ATTORNEY
GENERAL, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT

No. 12–96. Argued February 27, 2013—Decided June 25, 2013

The Voting Rights Act of 1965 was enacted to address entrenched racial discrimination in voting, “an insidious and pervasive evil which had been perpetuated in certain parts of our country through unremitting and ingenious defiance of the Constitution.” *South Carolina v. Katzenbach*, 383 U. S. 301, 309. Section 2 of the Act, which bans any “standard, practice, or procedure” that “results in a denial or abridgement of the right of any citizen . . . to vote on account of race



NATIONAL CONFERENCE OF STATE LEGISLATURES

FEDERAL LAW: VRA SECTION 2

- Prohibits Vote Dilution
- Applies Nationwide
- Requires litigation (not prophylactic)
- Burden of Proof: Discriminatory Effect
 - Plaintiffs do not need to prove discriminatory intent



FEDERAL LAW: VRA SECTION 2

Gingles Preconditions

Sufficiently large and geographically compact to constitute majority

Minority group is **politically cohesive**

White voters act as a bloc to defeat minority group's candidate of choice

Senate Factors

- History of official discrimination
- Racially polarized voting in the state
- Minority vote diluting election procedures
- Minority exclusion from the candidate slating process
- Discrimination in health education and employment
- Subtle or overt racial appeals in campaigns
- Extent of minority success being elected to public office

STATE LAW: FREE AND EQUAL ELECTIONS CLAUSES

POLITICO



The request to stay the ruling from the Pennsylvania state Supreme Court was denied without comment or recorded dissent. | Jacqueline Martin/AP Photo

Supreme Court won't block new Pennsylvania congressional map

By ELENA SCHNEIDER and STEVEN SHEPARD | 03/19/2018 03:51 PM EDT | Updated 03/19/2018

- 30 state constitutions require elections to be some combination of free, equal and fair
- Oklahoma Constitution Art. III, Section 5: “All elections shall be free and equal.”
- PA and NC courts read this clause to include prohibition on partisan gerrymandering



NATIONAL CONFERENCE OF STATE LEGISLATURES



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FEDERAL PRINCIPLES: SINGLE-MEMBER DISTRICTS

“In each State entitled . . . to more than one Representative . . . there shall be established by law a number of districts equal to the number of Representatives to which such State is so entitled, and Representatives shall be elected only from districts so established, no district to elect more than one Representative.” – 2 U.S.C. 2a

STATE PRINCIPLES: Oklahoma Constitution

Art. V, Sec. 9A

The state shall be apportioned into forty-eight senatorial districts . . . In apportioning the State Senate, consideration shall be given to **population, compactness, area, political units, historical precedents, economic and political interests, contiguous territory, and other major factors, to the extent feasible.**

STATE PRINCIPLES: COMPACTNESS

- Common traditional principle (40 states)
- Two common ways to measure:

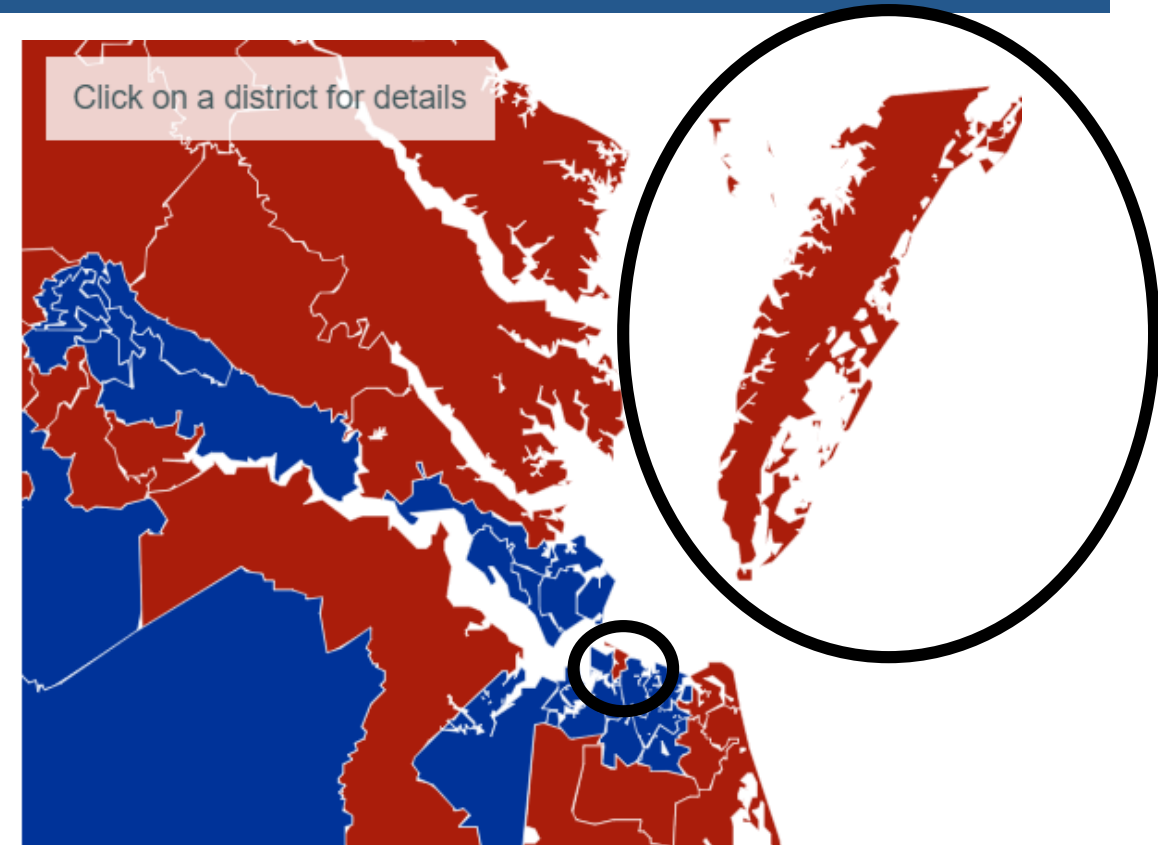
- Polsby-Popper :
$$\frac{\text{Area of District}}{\text{Area of Circle with Same Perimeter as District}}$$

- Reock :
$$\frac{\text{Area of District}}{\text{Area of Smallest Encompassing Circle}}$$



STATE PRINCIPLES: CONTIGUITY

- Most common principle (all 50 states)
- **General Rule:** Must be able to go to every part of the district without leaving it
- Where issues arise:
 - Non-contiguous locality boundaries (usually arises with annexations)
 - Water



STATE PRINCIPLES: PRESERVING POLITICAL SUBDIVISIONS

General Application

- Common traditional principle (45 states)
- Unless specified, could refer to any type of subdivision
 - County, City, School District, City Council Wards, etc.
- A stand-in for communities of interest or compactness?
- Importance of local political boundaries varies throughout the U.S.

Specific Application: Counties

- Sometimes codified (e.g., Idaho)
- Sometimes judicial (e.g., North Carolina)
- **General Idea:** keep counties or groups of counties together wherever possible. Only deviate from county borders when necessary to comply with federal laws like the Voting Rights Act or One Person, One Vote

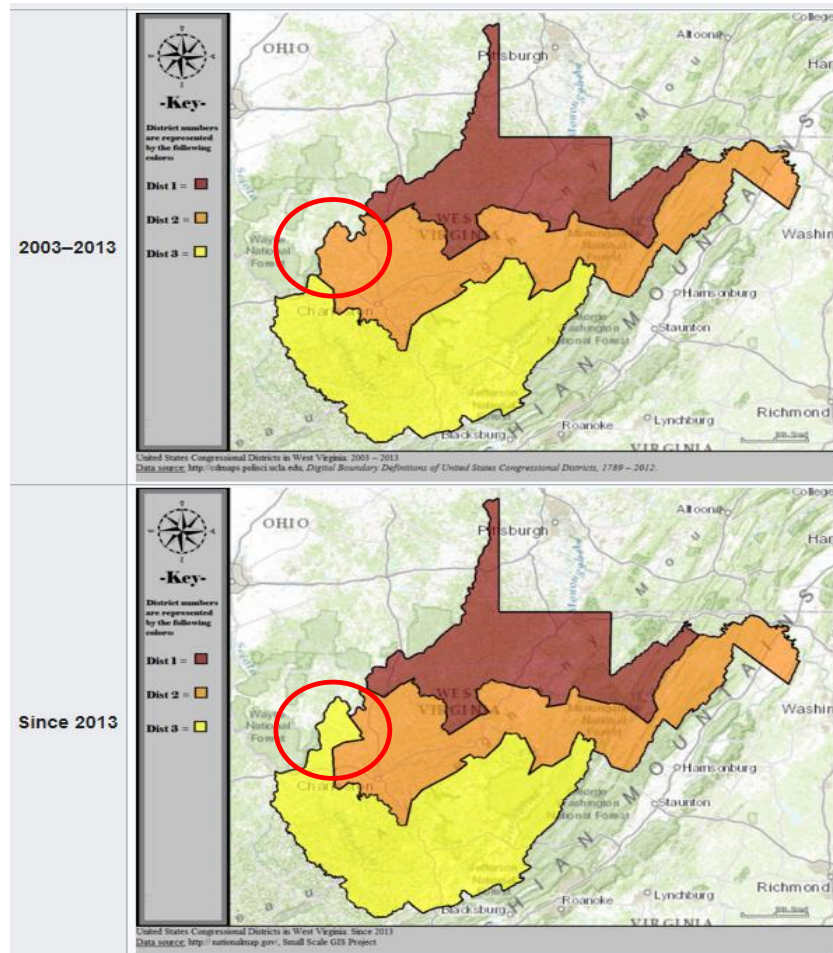


STATE PRINCIPLES: PRESERVING COMMUNITIES OF INTEREST

- Prevalent traditional principle (25 states)
- No agreed-upon definition
- Some states specify
 - **Alaska:** “Each house district shall . . . contain as nearly as practicable a relatively integrated socio-economic area”
 - **Missouri:** “Preserve long-standing communities of interest based on social, cultural, ethnic and economic similarities.”
 - **California:** “Communities of interest shall not include relationships with political parties, incumbents, or political candidates”



STATE PRINCIPLES: PRESERVING CORES OF PRIOR DISTRICTS



- Somewhat infrequent traditional principle (10 states)
- Rationale: don't unnecessarily break up peoples' relationships with their representatives
- Usually permitted but not required
- Some states (e.g., Arizona) explicitly reject this principle and draw districts anew each decade

STATE PRINCIPLES: OTHER PRINCIPLES

- Avoid Pairing Incumbents (11 states)
- Prohibition on favoring or disfavoring an incumbent, candidate or party (17 states)
- Prohibition on using partisan data (5 states)
- Competitiveness (4 states)
- Proportionality (1 state—Ohio)
- Symmetry (1 state—Missouri)



THANK YOU

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National Conference of State Legislatures

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